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EXAMINER

STEVENS, THOMAS H

ART UNIT	PAPER NUMBER
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2123

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/938,966

Applicant(s)

AUPPERLE ET AL.

Examiner

Thomas H. Stevens

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/01/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-42 were examined.

### ***Hyperlinks***

2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (pg.13). Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

### ***Information Disclosure Statement***

3. The documents were not considered because year of publication must be sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the particular month of publication is not an issue. (See MPEP 609 pg. 600-127 to 600-128; May 2004 issue)

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-32 and 34-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Welter et al., (U.S. Patent 6,631,408 (2003)). Welter et al., teaches a method for testing web sites (abstract).

Claim 1. A method of identifying web sites (column 2, lines 26-36) comprising: identifying at least one functional characteristic to be tested (column 2, lines 37-47); retrieving content for a web site (column 4, lines 44-60); testing the content of the web site for the presence of the at least one functional characteristic (column 2, lines 26-36); and storing the results of the testing of the content of the web site (column 2, lines 26-36).

Claim 2. The method of claim 1, (column 2, lines 26-47) wherein the at least one functional characteristic identifies a functional characteristic of web sites that requires a function to be enabled by a client device (column 2, lines 49-57) in order to output the web site

content on the client device.

Claim 3. The method of claim 1 (column 2, lines 26-47) further comprising: disabling, in a web browser (column 6, lines 21-25), the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 4. The method of claim 3, (column 2, lines 26-47; column 6, lines 33-47) wherein testing the content of the web site for the presence of the at least one functional characteristic includes determining if a portion of the content not one functional output by the web browser due to the at least characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 5. The method of claim 1, (column 2, lines 26-47) wherein storing the results of the testing includes generating an entry in a web site functional characteristics database based on the results of the testing (column 2, lines 49-57).

Claim 6. The method of claim 1, (column 2, lines 26-47) wherein the at least one functional characteristic includes at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies (columns 7-8, lines 64-67 and 1-3) on a client device, providing dynamic web page content, providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, lines 15-20).

Claim 7. The method of claim 1, (column 2, lines 26-47) wherein retrieving content for the web site includes generating a list of web sites to be tested, and selecting a next web site in the list of web sites to be tested (column 6, lines 60-67).

Claim 8. The method of claim 7, (column 2, lines 26-47; column 6, lines 60-67) wherein identifying at least one functional characteristic to be tested includes generating a list of functional characteristics to be tested (column 6, lines 15-20), and selecting a next functional characteristic in the list of functional characteristics to be tested.

Claim 9. The method of claim 8, (column 2, lines 26-47; column 6, lines 60-67; column 6, lines 15-20) wherein testing the content of the web site for the presence of the at least one functional characteristic includes for each web site in the list of web site, testing each functional characteristic in the list of functional characteristics.

Claim 10. The method of claim 5 (column 2, lines 26-47; column 2, lines 49-57) further comprising: receiving a search request including a designation of one or more web site functional characteristics (column 6, lines 60-65 and column 5, lines 25-30); searching the web site functional characteristics database based on the search request (column 6, lines 11-20); and returning results of searching the web site functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, lines 60-65 and column 5, lines 25-30).

Claim 11. A computer program product in a computer readable medium for identifying web sites (column 10, lines 18-30), comprising: first instructions for identifying at least one functional characteristic to be tested (column 6, lines 16); second instructions (column 6, line 11) for retrieving content for a web site; third instructions for testing the content of the web site (column 4, lines 50-53) for the presence of the at least one functional characteristic (column 6, line 16); and fourth instructions for storing the results of the testing of the content of the web site (column 3, lines 5-10).

Claim 12. The computer program product of claim 11, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the at least one functional characteristic identifies a functional characteristic of web sites that requires a function to be enabled a client device (column 2, lines 49-57) in order to output the web site content on the client device.

Claim 13. The computer program product of claim 11 (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) further comprising: fifth instructions for disabling, in a web browser, the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 14. The computer program product of claim 11 (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the third instructions for

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testing the content of the web site for the presence of the at least one functional characteristic include instructions for determining a portion of the content is not output by the web browser due to the at least one functional characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 15. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the fourth instructions for storing the results of the testing include instructions for generating an entry (column 8, lines 44-67 with figure 8) in a web site functional characteristics database based on the results of the testing.

Claim 16. The computer program product of claim 11, (column 2, lines 26-47) wherein the at least one functional characteristic includes at least one of the use active scripting, a type of active scripting used, a plug-in application used, the use forms, the storing of cookies (columns 7-8, lines 64-67 and 1-3) on a client device, providing dynamic web page content, providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, lines 15-20).



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Claim 17. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the second instructions for retrieving content for the web site include instructions for generating a list of web sites to be tested (column 8, lines 44-67 with figure 8), and instructions for selecting a next web site in the (column 6, lines 60-67) list of web sites to be tested.

Claim 18. The computer program product of claim 17, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10; column 8, lines 44-67 with figure 8; column 6, lines 60-67) wherein the first instructions for identifying at least one functional characteristic to be tested include instructions for generating a list of functional characteristics to be tested, (column 8, lines 44-67 with figure 8) and instructions for selecting a next functional characteristic in the list of functional characteristics (column 6, line 16) to be tested.

Claim 19. The computer program product of claim 18, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10; column 8, lines 44-67 with figure 8; column 6, lines 60-67; column 8, lines 44-67 with figure 8) wherein the third instructions for testing the content of the web site for the presence of the at least one functional characteristic include instructions for testing each functional characteristic in the list of functional characteristics for each web site in the list of web sites (column 6, lines 60-67).

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Claim 20. The computer program product of claim 11(column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) is, further comprising: fifth instructions for receiving a search request (column 6, line 16) including a designation of one or more web site functional characteristics (column 6, lines 60-67); sixth instructions for searching the web site functional characteristics database based on the search request (column 6, line 16); and seventh instructions for returning results of searching the web site functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, lines 60-65 and column 5,lines 25-30).

Claim 21. An apparatus for identifying web sites, comprising: a network interface (column 1, lines 10-15); database interface (column 2, lines 33-35); and a web site content analysis engine coupled to the network interface and the database interface, wherein the web site content analysis engine identifies at least one functional characteristic to be tested (column 2, lines 38-47), retrieves content for a web site via the network interface, tests the content of the web site for the presence of the at least one functional characteristic (column 6, line 15), and stores the results of the testing of the content of the web site via the database interface.

Claim 22. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the at least one functional

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characteristic identifies a functional characteristic of web sites that requires a function to be enabled by a client device (column 2, lines 49-57) order to output the web site content on the client device.

Claim 23. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine disables, in a web browser, the at least one functional characteristic prior to retrieving the content for the web site (column 6, lines 33-47).

Claim 24. The apparatus claim 23, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 6, lines 33-47) wherein the web site content analysis engine tests the content of the web site the presence of the at least one functional characteristic by determining if a portion of the content is not output by the web browser due to the least one functional characteristic being disabled (examiner interprets this part as a warning if POST data has errors: column 3, lines 21-36).

Claim 25. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine stores the results the testing by generating an entry (column 8, lines 44-67 with figure 8) in a web site functional characteristics database based on the results of the testing.

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Claim 26. The apparatus of claim 21, (column 2, lines 26-47) wherein the at least one functional characteristic includes at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies on a client device (columns 7-8, lines 64-67 and 1-3), providing dynamic web page content, providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, lines 15-20).

Claim 27. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine retrieves content for the web site by generating a list of web sites to be tested, (column 8, lines 44-67 with figure 8) and selecting a next web site in the (column 6, lines 60-67) list of web sites to be tested.

Claim 28. The apparatus of claim 27, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67; with figure 8; column 6, lines 60-67) wherein the web site content analysis engine identifies (column 4, lines 45-55) at least one functional characteristic to be tested by generating a list of functional characteristics to be tested, and selecting a next functional characteristic in the list of functional characteristics (column 6, line 16) to be tested.

Claim 29. The apparatus of claim 28, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67; with figure 8; column 6,

lines 60-67) wherein the web site content analysis engine tests the content of the web site for the presence of the at least one functional characteristic by, for each web site in the list of web site, testing each functional characteristic in the list of functional characteristics(column 6, line 16).

Claim 30. The apparatus of claim 25, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15; column 8, lines 44-67 with figure 8) further comprising: a search engine coupled to the search request input interface generation device and the search results interface generation device, wherein the search engine receives a search request including a designation of one or more web site functional characteristics (column 6, lines 10-20), searches the web site functional characteristics database based on the search request, and returns results of searching the web site (column 3, lines 5-10)functional characteristics database to thereby identify zero or more web sites having or not having the designated one or more web site functional characteristics (column 6, line 16 and lines 60-67).

Claim 31. A method of identifying web sites (column 5, lines 25-33), comprising: receiving a search request including a designation of one or more web site functional characteristics; searching a web site functional characteristics database (column 6, line 16 and column 5, lines 5-10) based on the search request; and returning results of searching the web site functional characteristics database to thereby identify zero or

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more web sites having or not having the designated one or more web site functional characteristics (column 6, line 16 and 60-67).

Claim 32. The method of claim 31, (column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67) wherein the one or more web site functional characteristics identify functions that are enabled on a client device web browser in order to output (column 8, lines 4-15) the web site content on the client device.

Claim 34. The method of claim 31, (column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67) wherein the one or more web site functional characteristics include at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies (column 7, lines 60-67) on a client device, providing dynamic web page content (column 3, line 14), providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, line 16).

Claim 35. A data structure having entries corresponding to web sites for use by a computing device to identify web sites (column 3, lines 1-25) based on functional characteristics, each entry comprising: web site identifier field for identifying a web site (column 6, lines 59-65); and one or more functional characteristic fields for identifying

functional characteristics of the web site identified in the web site identifier field (column 7, lines 9-18 with figure 5).

Claim 36. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the functional characteristics identify functions that are enabled on a client device (column 1, lines 40-51 with figure 1) web browser in order to output the web site content on the client device.

Claim 37. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the functional characteristics include at least one of the use of active scripting, a type of active scripting used, a plug-in application used, the use of forms, the storing of cookies on a client device, providing dynamic web page content (column 3, line 14), providing dynamic user interfaces, displaying digital movies, and broadcasting audio data (column 6, line 16).

Claim 38. The data structure of claim 35, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5) wherein the data structure is stored on a computer readable medium (column 4, lines 4-17 with figure 2).

Claim 39. The data structure claim 38, (column 3, lines 1-25; column 6, lines 59-65; column 7, lines 9-18 with figure 5; column 4, lines 4-17 with figure 2) wherein the

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computer readable medium is part of a network attached storage unit (column 1, lines 10-15; column 3, lines 5-10).

Claim 40. The method of claim 1, (column 2, lines 26-47) wherein the results of the testing of the content of the web site are stored in a network attached storage unit (column 1, lines 10-15; column 3, lines 5-10).

Claim 41. The computer program product of claim 11, (column 10, lines 18-30; column 6, lines 16; column 4, lines 50-53; column 3, lines 5-10) wherein the fourth instructions for storing the results the testing the content of the web site include instructions for storing the results of the testing in a network attached storage unit (column 3, lines 5-10).

Claim 42. The apparatus of claim 21, (column 1, lines 10-15; column 2, lines 33-35; column 2, lines 38-47; column 6, line 15) wherein the web site content analysis engine stores the results of the testing of the web site in a database stored on a network attached storage unit (column 1, lines 10-20 with column 3, lines 10-20).

### ***Claim Rejections - 35 USC § 103***

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.



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2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 33 is rejected under 35 U.S.C. 103 (a) as unpatentable by Scarlat et al. (U.S. 6,477,483 (2002)), in view of Welter et al., (U.S. 6,631,408 (2003)). Scarlat et al., teaches a service provider remotely load-test sites or other transaction servers over the Internet using a hosted service; but doesn't teach a plurality of websites. Welter et al., teaches testing multiple web sites.

At the time of invention, it would have been obvious to one of ordinary skill in the art to modify Welter et al. by way of Scarlat et al., since companies may not have the time or resources to set up and analyze results; plus, a firm would have the capability service many clients for significant profit.

Claim 33. The method of claim 31, (Welter: column 5, lines 25-33; column 6, line 16 and column 5, lines 5-10; column 6, line 16 and 60-67) further comprising: charging a fee to an account of a source (Scarlat: column 5, lines 26-39) of the search request searching

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the web site functional characteristics database based on the search request (Welter: column 6, lines 10-12).

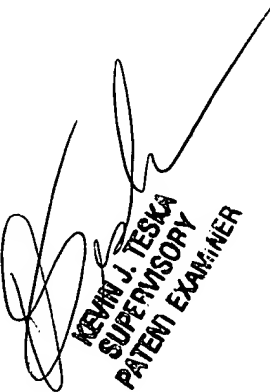
***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715, Monday-Friday (8:00 am- 4:30 pm) or contact Supervisor Mr. Kevin Teska at (571) 272-3716. Fax number is 571-273-3715.

Any inquires of general nature or relating to the status of this application should be directed to the Group receptionist whose phone number is (571) 272-1400

February 25, 2005

THS

  
KEVIN J. TESKA  
SUPERVISORY  
PATENT EXAMINER